

Claimant, respondent (uninsured) and the Kansas Workers Compensation Fund appeared before Administrative Law Judge Shannon S. Krysl on February 15, 1996 regarding claimant's application for temporary total disability compensation and ongoing medical treatment. Also at issue at that hearing was whether or not the respondent, an uninsured company, had a payroll in excess of \$20,000 per year for the year 1995, thus invoking the coverage of the Kansas Workers Compensation Act. The Administrative Law

Judge, in the February 15, 1996 Order, found the employer met the payroll requirements of K.S.A. 44-505(a)(2) and granted claimant benefits in the form of medical treatment and temporary total disability compensation. At the preliminary hearing of February 15, 1996, the Administrative Law Judge, in finding the employer had a payroll in excess of \$20,000 per year, went on to say that this would bring the parties within the provisions of the Workers Compensation Act and further stated "that is subject to change should the employer bring forward evidence that they did not meet that payroll. But today there is not evidence to contradict that."

Claimant made demand upon respondent for the medical treatment and temporary total disability compensation, which was not forthcoming. The parties then proceeded to the hearing on March 14, 1996, which resulted in the March 14, 1996 Order from Judge Krysl requiring the Workers Compensation Fund to provide the benefits awarded.

No appeal was taken from the February 15, 1996 Order. Thus, the only appeal properly before the Workers Compensation Appeals Board is the Order of March 14, 1996. As such, the only issue to be considered by the Appeals Board is whether the Administrative Law Judge, in ordering payment by the Fund, exceeded her jurisdiction. See K.S.A. 44-534a and K.S.A. 44-551.

K.S.A. 44-532a(a) allows assessment of costs against the Kansas Workers Compensation Fund should a respondent be financially unable to pay compensation to an injured worker as required by the Workers Compensation Act. The Administrative Law Judge, in her Order of March 14, 1996 cites Helms v. Pendergast, 21 Kan. App. 2d 303, (1995) which stands for the proposition that it is not the claimant's burden to prove an employer is uninsured or otherwise unable to pay before impleading the Workers Compensation Fund. The Administrative Law Judge, in ordering payment by the Workers Compensation Fund, was merely protecting the rights of a claimant who had suffered injury for which temporary compensation and medical treatment had been ordered.

Judge Krysl, in reviewing the evidence offered and hearing the arguments of the parties at the March 14, 1996 preliminary hearing, failed to find evidence sufficiently persuasive to cause her to reverse her February 15, 1996 Order. Decisions such as these are the daily bread of an administrative law judge's litigation docket. To handcuff an administrative law judge by ruling that this type of order is beyond his or her jurisdiction would significantly hamper the workers compensation administrative process.

The Appeals Board finds the decision by the Administrative Law Judge ordering payment by the Workers Compensation Fund pursuant to Helms v. Pendergast, neither involved issues listed in K.S.A. 44-534a as amended by S.B. 649 (1996) as appealable to the Appeals Board nor exceeded the Administrative Law Judge's jurisdiction as is required by K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krysl dated March 14, 1996, remains in full force and effect and the appeal of the Kansas Workers Compensation Fund should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven L. Foulston, Wichita, KS
Larry Linn, Wichita, KS
John C. Nodgaard, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director